

Simon Manoucherian (Bar No. 198760)  
 SManoucherian@mmhllp.com  
 Frederic Esrailian (Bar No. 232799)  
 FEsrailian@mmhllp.com  
 MESERVE, MUMPER & HUGHES LLP  
 300 South Grand Avenue, 24th Floor  
 Los Angeles, California 90071-3185  
 Telephone: (213) 620-0300  
 Facsimile: (213) 625-1930  
 Attorneys for Defendants  
 HM LIFE INSURANCE COMPANY, successor-  
 in-interest to GROUPAMERICA INSURANCE  
 COMPANY; and COMPUWARE  
 CORPORATION EMPLOYEE BENEFITS PLAN

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

IRENE DEMEE,  Plaintiff,  v.  GROUPAMERICA INSURANCE COMPANY, COMPUWARE CORPORATION EMPLOYEE BENEFITS PLAN and DOES 1-50, inclusive,  Defendants.	} Case No. C 07-03387 JSW } JOINT CASE MANAGEMENT } STATEMENT } [F.R.C.P. 16 and 26] } Date: September 14, 2007 } Time: 1:30 p.m. } Ctrm: 2 } Complaint Filed: April 12, 2007
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Pursuant to Federal Rules of Civil Procedure, Rules 16 and 26(f), this Court's Order, and the Local Rules of this Court, Plaintiff IREME DEMEE (hereinafter "Plaintiff") and Defendant HM LIFE INSURANCE COMPANY, successor-in-interest to GROUPAMERICA INSURANCE COMPANY ("HM Life") (Plaintiff and HM Life are hereinafter sometimes collectively referred to as "the parties"), by and through their respective counsel of record, hereby jointly submit this Case Management Statement and request the Court to adopt it as its Case Management Order.

1 **1. Jurisdiction and Service.**

2 This action was removed to this Court based upon federal question  
3 jurisdiction pursuant to 28 U.S.C. Sections 1331 and 1441(b). Plaintiff's suit is one  
4 to recover damages stemming from the allegedly improper denial of a claim for life  
5 insurance benefits under a benefit plan governed by the Employee Retirement  
6 Income Security Act of 1974 ("ERISA"), 29 U.S.C. Sections 1001, *et seq.* The suit  
7 is one of a civil nature over which the United States District Court has original  
8 jurisdiction.

9 There are no issues at this time concerning personal jurisdiction or venue, and  
10 all parties have been served.

11 On or about August 14, 2007, pursuant to the stipulation of the parties, this  
12 Court ordered the dismissal of defendant Compuware Corporation Employee  
13 Benefits Plan ("Plan"), without prejudice.

14  
15 **2. Facts (Chronology and Principal Issues in Dispute).**

16 **a. Summary-Chronology**

17 GroupAmerica Insurance Company, now HM Life, issued a life insurance  
18 policy ("Life Policy") as part of the Plan, insuring Alphonse Demee as a  
19 Compuware Corporation employee, entitling his designated beneficiary to life  
20 benefits in accordance with the terms and conditions of the Life Policy. Alphonse  
21 Demee ("decedent") named his mother, the Plaintiff, as the beneficiary under the  
22 Life Policy.

23 Decedent passed away on or about April 21, 2006. Plaintiff contends that she  
24 has demanded from HM Life and is entitled to receive benefits pursuant to the Life  
25 Policy. HM Life contends that Plaintiff has failed to demand payment of benefits or  
26 otherwise exhaust her administrative remedies, as required by the Plan, the Life  
27 Policy, and ERISA. Additionally, HM Life contends that Plaintiff is not eligible to  
28 receive benefits under the Life Policy for the reasons outlined in its Answer to the

1 Complaint, including the fact that decedent waived and released his rights under the  
2 policy at issue on or about July 20, 2001. HM Life disputes all facts and all  
3 allegations of wrongdoing, as more fully described in its Answer to Plaintiff's  
4 Complaint.

5       b.     **Factual Issues**

6       In view of HM Life's General Denial (Answer) filed in response to Plaintiff's  
7 Complaint, essentially all factual issues are in dispute. The principal issue is  
8 whether Plaintiff is entitled to benefits pursuant to the terms of the Life Policy. As  
9 this is an ERISA matter, the Court will have to determine, based on the evidence in  
10 the administrative record, whether HM Life abused its discretion in denying  
11 Plaintiff's claim for benefits.

12       However, HM Life contends that Plaintiff has failed to file a claim for  
13 benefits, or otherwise exhaust her administrative remedies as required by the Plan,  
14 the Life Policy, and ERISA.

15  
16     **3.     Legal Issues.**

17       This action is governed by the Employee Retirement Income Security Act of  
18 1974 ("ERISA"), 29 U.S.C. Sections 1001, et seq. The principal legal issues are:

- 19       a.     Whether the standard of review is abuse of discretion or de novo;  
20       b.     Whether Plaintiff has filed a claim for benefits, or otherwise exhausted  
21 her administrative remedies as required by the Plan, the Life Policy, and ERISA  
22       c.     Whether the plan administrator abused its discretion in determining  
23 Plaintiff's claim for benefits/Whether Plaintiff is entitled to benefits pursuant to the  
24 terms and conditions of the Life Policy.

25  
26     **4.     Motions.**

27       There are no prior or pending motions.  
28

1 HM Life anticipates filing a motion for summary judgment, as it contends that  
2 Plaintiff has failed to file a claim for benefits, or otherwise exhaust her  
3 administrative remedies as required by the Plan, the Life Policy, and ERISA.

4 The parties anticipate filing cross-motions to determine the standard of  
5 review.

6  
7 **5. Amendment of Pleadings.**

8 The parties do not anticipate the joinder of any additional parties or claims to  
9 this action, nor do they anticipate amending the pleadings. The parties recommend  
10 the deadline for amending the pleadings be set for **October 15, 2007.**

11  
12 **6. Evidence Preservation.**

13 Evidence in this ERISA matter is limited to the administrative record, which  
14 will be produced in its entirety (with the exception of any privileged documents) to  
15 Plaintiff on or before **October 1, 2007.** Plaintiff reserves the right to supplement the  
16 Administrative record and offer additional evidence.

17  
18 **7. Disclosures.**

19 The administrative record will be produced in its entirety (with the exception  
20 of any privileged documents) to Plaintiff on or before **October 1, 2007.**

21  
22 **8. Discovery.**

23 This matter is governed by the Employee Retirement Income Security Act of  
24 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA").

25 **a. Non-Expert Discovery.**

26 With certain limited exceptions, ERISA provides that the reviewing court  
27 may only consider the evidence that was before the plan or claim administrator at  
28 the time the decision to deny/terminate benefits was made or affirmed. **Kearney v.**

1 Standard Ins. Co., 175 F.3d 1084, 1094-95 (9<sup>th</sup> Cir. 1999) (en banc); see also,  
2 Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan, 46 F.3d 938,  
3 943-44 (9<sup>th</sup> Cir. 1995).

4 However, Plaintiff asserts that supplementation of the record may be  
5 permitted to enable Plaintiff's attempt to demonstrate the existence of a conflict  
6 sufficient to alter the standard of review to a de novo review and for other purposes.  
7 Tremain v. Bell Industries, 196 F. 3d 970 (9th Cir. 1999). Plaintiff contends that  
8 even if additional plan documents support an abuse of discretion standard, Plaintiff  
9 is entitled to discovery regarding a conflict of interest that may have existed during  
10 Defendant's handling of the claim.

11 HM Life contends that until such a judicial determination is made, the  
12 presumption is that the plan or claim administrator had discretion in evaluating  
13 Plaintiff's claim. HM Life disputes that discovery is allowed in an ERISA matter.

14 HM Life will produce the administrative record. Upon review of Defendant's  
15 production, Plaintiff will determine whether she believes that discovery is  
16 necessitated to complete the record and to ensure that all relevant plan documents  
17 are contained in the record.

18 HM Life objects to any discovery in this case and asserts that there is no  
19 conflict of interest that affected the claims decision (in fact, HM Life contends that  
20 no claim was made by Plaintiff and therefore, she has failed to exhaust her  
21 administrative remedies). It is HM Life's position that the Court should decide this  
22 case solely on the record that was before the claim administrator when it made its  
23 decision. Kearney, 175 F.3d at 1094-95; Mongeluzo, 46 F.3d at 943-44.

24 The parties propose a cut-off date of **December 14, 2007** for discovery and  
25 the hearing discovery related motions.

26 **b. Expert Discovery.**

27 Plaintiff does not anticipate utilizing expert witnesses at trial. HM Life  
28 objects to any such "expert evidence" in this case. It is HM Life's position that the

1 Court should decide this case solely on the record that was before the claim  
2 administrator when it made its decision. Kearney, 175 F.3d at 1094-95; Mongeluzo,  
3 46 F.3d at 943-44.

4  
5 **9. Class Actions.**

6 Not Applicable.

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8 **10. Related Cases.**

9 None.

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11 **11. Relief.**

12 Plaintiff seeks at least \$154,000 in benefits (the face amount of the Life  
13 Policy), interest, costs, and attorneys' fees.

14 HM Life alleges that if any relief is awarded, it must be limited to relief  
15 allowed under ERISA. If attorneys' fees are awarded, HM Life asserts that Plaintiff  
16 must first satisfy the factors established in Hummell v. Rykoff, 634 F.2d 446, 453  
17 (9<sup>th</sup> Cir. 1980).

18  
19 **12. Settlement ADR.**

20 The parties are currently negotiating and attempting a resolution to this  
21 matter. If they are not successful, they intend to file a Stipulation and Order  
22 Selecting Private Mediation. There is no need for an ADR Phone Conference. The  
23 parties propose a mediation cut-off of **November 12, 2007.**

24  
25 **13. Consent to Magistrate Judge for All Purposes.**

26 The parties do not consent for this case to be assigned to a United States  
27 Magistrate Judge for further proceedings.

1 **14. Other References.**

2 The parties do not believe that this matter is suitable for other references at  
3 this time.

4  
5 **15. Narrowing of Issues.**

6 The parties do not believe the issues can be narrowed any further at this stage  
7 of the litigation.

8  
9 **16. Expedited Schedule.**

10 As this matter is governed by ERISA, it can be streamlined in the following  
11 manner:

- 12 a. This is an ERISA matter, which will involve no live testimony;  
13 b. Presently, the parties anticipate that the only evidence which shall be  
14 presented at the trial will be the administrative record, but Plaintiff reserves the right  
15 to present other evidence;  
16 c. The parties' respective positions may be briefed through dispositive  
17 motions/trial briefs.

18 For the same reasons, the parties submit that this case is appropriate for a  
19 waiver of the Court's pre-trial requirements.

20  
21 **17. Scheduling.**

- 22 a. Amendment of Pleadings: October 15, 2007  
23 b. ADR Completion: November 12, 2007  
24 c. Discovery Cut-Off (incl. related motions): December 14, 2007  
25 d. Motion hearing Cut-Off: February 25, 2008  
26 e. Opening Trial Briefs: March 17, 2008  
27 f. Responsive Trial Briefs: March 31, 2008  
28 g. Final Pre-Trial Conference: Waived.



h. Court Trial: April 15, 2008.

**18. Trial.**

Trial will be by Court and is estimated at two hours to one half day.

**19. Disclosure of Non-party Interested Entities or Persons.**

Each party has filed the required disclosure statement.

For further clarification to its Certification of Interested Entities or Persons, HM Life asserts that pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: HM Life Insurance Company, successor-in-interest to GroupAmerica Insurance Company, is a wholly owned subsidiary of HM Insurance Group, Inc., which is a wholly owned subsidiary of the parent company, Highmark, Inc..

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1 **20. Other Matters.**

2 None at this time.

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4 Dated: September 7, 2007

MESERVE, MUMPER & HUGHES LLP  
Simon Manoucherian  
Frederic Esrailian

5  
6  
7 By: 

8 Simon Manoucherian  
9 Attorneys for Defendant  
10 HM LIFE INSURANCE COMPANY,  
successor-in-interest to  
GROUPAMERICA INSURANCE  
COMPANY

11 Dated: September 7, 2007

LAW OFFICES OF JOHN FRYE  
John Frye

12  
13 By: \_\_\_\_\_

14 John Frye  
15 Attorneys for Plaintiff  
IREME DEMEE

1 **20. Other Matters.**

2 None at this time.

3  
4 Dated: September 7, 2007

MESERVE, MUMPER & HUGHES LLP  
Simon Manoucherian  
Frederic Esrailian

5  
6  
7 By: \_\_\_\_\_

Simon Manoucherian  
Attorneys for Defendant  
HM LIFE INSURANCE COMPANY,  
successor-in-interest to  
GROUPAMERICA INSURANCE  
COMPANY

8  
9  
10  
11 Dated: September 7, 2007

LAW OFFICES OF JOHN FRYE  
John Frye

12  
13 By: \_\_\_\_\_

John Frye  
Attorneys for Plaintiff  
IREME DEMEE